

BEFORE THE STATE OF MONTANA

SUPERINTENDENT OF PUBLIC INSTRUCTION

JAMES C. HOLTER, }
Appellant, }
v. }
VALLEY COUNTY SCHOOL DISTRICT }
NO. 13, }
Respondent. }
} DECISION AND ORDER
} OSPI 29-82
}

JAMES C. HOLTER (Appellant) is appealing a reduction in force (RIF) decision of Valley County School District No. 13. In 1981, Appellant successfully appealed his RIF to this State Superintendent and was ordered to be reinstated by the School District in early 1982. See Holter v. Valley County School District No. 13, OSPI 7-81. Following that reinstatement, Appellant acted as an elementary physical education teacher, a position for which he was certified, as well as three study hall periods. The record also reflects that Appellant had taught other subjects in his previous four years with the District for which he was not certified.

As in the previous Holter I decision, Section 2-4-704, MCA governs the standard of review which I must apply. See Uniform Rules of School Controversy.

The issues which I must consider relate to the adjustment of Appellant's teaching responsibilities after he was reinstated and the impact of his reassignment of the RIF imposed by the School District.

In Holter I, I recognized the management rights of the School District to be those set forth in Section 39-31-303 MCA which provides in part:

"Section 39-31-303. Management Rights of Public Employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to, . . . (2) hire, promote, transfer, assign and retain employees; . . ."

In Irene D. Sorlie v. School District No. 2, Yellowstone County, OSPI 10-81, Decision and Order rendered September 28, 1981, I chose to liberally interpret the definition of "teacher" in order to make the



management rights of School Districts realistic. I hold in this case that the School District was certainly within its rights to assign the teacher to those subjects for which he was certified. From the record, **it** is abundantly clear that Appellant has on several occasions had the opportunity to gain additional certification but has chosen to put other priorities ahead of certification.

In rule, I imposed a strict requirement for the RIF of a tenured teacher. A school district must show a justifiable need for a RIF and cannot RIF a tenured teacher while retaining a nontenured teacher to fill a position for which the tenured teacher was qualified.

In this case, the School District met the burden by showing that no nontenured teacher would exclusively be teaching the subjects which the Appellant taught prior to the RIF. The fact that each elementary teacher would also be teaching P.E. is not a ground for reversal simply because all of the teachers are not tenured.

The School District had experienced declining enrollment, and the decision to decrease its teaching staff pursuant to Section 39-31-303 (3) MCA was proper.

There is also substantial evidence that the RIF policy was applied fairly to Appellant in this instance.

My commitment to give strong support to the concept of tenure remains. However, in this instance, Appellant is attempting to remain in a School District which has suffered a consistent drop in students for a number of years; at the same time the Appellant has not broadened his teaching certification to meet the obvious demand for teachers who have certification in many subjects. No question was ever raised on Appellant's ability to teach or his intelligence. Appellant must consider that if he intends to teach in rural areas, where enrollments are declining, he must broaden his teaching certification in order to be a more useful and valuable employee in a situation where students, teachers and school budgets are under pressure.

Montana's rural schools have consistently maintained a high level of quality. I believe that Appellant's RIF is an unfortunate occurrence in view of his background of experience, but I believe the School District acted in a valid managerial capacity when **it** eliminated his position. Hopefully Appellant will obtain certification

necessary to be more marketable in the rural areas where he enjoys teaching and living.

Therefore the Decision of the County Superintendent is affirmed.

DATED December 27, 1982.